

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ryan Meltzer	Team: Team # 8	CCRB Case #: 200802978	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/28/2008 2:30 PM	Location of Incident: § 87(2)(b) and the 77th Precinct station house	Precinct: 77	18 Mo. SOL 8/28/2009	EO SOL 8/28/2009	
Date/Time CV Reported Thu, 02/28/2008 3:24 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/28/2008 3:24 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Darryl Chen	29402	903608	077 PCT
2. An officer			
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Eddy Linares	20761	933933	077 PCT
2. POM Arthur McMahon	19781	944796	077 PCT
3. LT Jocee Leah Cotton	00000	913626	077 PCT
4. POF Margaret Merendino	22947	917735	077 PCT
5. POF Tania Salters	02318	921420	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A. POM Darryl Chen	Abuse: In front of § 87(2)(b) in Brooklyn, PO Darryl Chen questioned § 87(2)(b)	
B. POM Darryl Chen	Discourtesy: In front of § 87(2)(b) in Brooklyn, PO Darryl Chen spoke rudely to § 87(2)(b)	
C. Officers	Abuse: At the 77th Precinct station house, officers strip-searched § 87(2)(b)	
D. An officer	Discourtesy: At the 77th Precinct station house, an officer spoke obscenely and rudely to § 87(2)(b)	
E. An officer	Abuse: At the 77th Precinct station house, an officer threatened to issue a summons to § 87(2)(b)	

Synopsis

On February 28, 2008 at approximately 2:25 PM, PO Darryl Chen of the 77th Precinct approached § 87(2)(b) as she walked on the sidewalk in the vicinity of 1247 Dean Street in Brooklyn. § 87(2)(b) alleged that PO Chen questioned her about her knowledge of narcotics activity in the area, her reasons for being in the area, and her suspected possession of narcotics (**Allegation A**), and she additionally claimed that PO Chen called her a “drug addict” and a “crack head” (**Allegation B**). After some discussion, PO Chen placed § 87(2)(b) under arrest for disorderly conduct and transported her to the 77th Precinct station house. At the 77th Precinct station house, § 87(2)(b) alleged, she was subjected to a strip-search by three female officers, one of whom pulled her by her collar and told her, “You ain’t nothing but an alcoholic and a crack head” (**Allegations C and D**). Once PO Chen determined that § 87(2)(b) did not have any open warrants, he issued her a summons for disorderly conduct, and released her from police custody. § 87(2)(b) refused to exit the holding cell, however, and an officer allegedly threatened to issue her a summons (**Allegation E**). § 87(2)(b) subsequently left the station house.

This case was originally assigned to Inv. David Coyle. It was reassigned to Inv. Ryan Meltzer in September 2008, following Inv. Coyle’s resignation from the CCRB.

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) called the CCRB to file this complaint on February 28, 2008 [Encl. 5A-B]. § 87(2)(b) provided a brief telephone statement on March 3, 2008 [Encl. 6], and she was interviewed at the CCRB on March 21, 2008 [Encl. 7A-F]. § 87(2)(b)’s CCRB statement is summarized below, with relevant inconsistencies between her various accounts noted.

§ 87(2)(b) is a § 87(2)(b).

On February 28, 2008 at approximately 2:25 PM, § 87(2)(b) walked out of her residential building, located at 1237 Dean Street in Brooklyn, to purchase a vitamin drink from a corner store. She was holding her house keys, five dollars, and a tissue in her hands. As she walked, a marked patrol car pulled up in front of 1237 Dean Street, and a uniformed black male officer called out to her to come to the vehicle. There was another uniformed white or Hispanic male officer seated in the front passenger seat of the patrol car. The CCRB identified the black male officer as PO Darryl Chen, and the white/Hispanic male officer as PO Eddy Linares, both assigned to the 77th Precinct.

§ 87(2)(b) approached the patrol car and asked PO Chen what he wanted. PO Chen told § 87(2)(b) that he had seen her walking from the intersection of Dean Street and New York Avenue. § 87(2)(b) replied that she had been coming from her home. PO Chen responded that he had seen § 87(2)(b) walking from § 87(2)(b) which § 87(2)(b) knew to be a “drug building.” § 87(2)(b) denied being in- or near § 87(2)(b) at any time on this date. PO Chen then asked § 87(2)(b) what she had in her hand, and suggested that § 87(2)(b) was in possession of drugs acquired at § 87(2)(b). § 87(2)(b) displayed her house keys to PO Chen, in order to verify her claim that she lived at 1237 Dean Street. PO Chen retorted that the building outside of which § 87(2)(b) was currently standing was § 87(2)(b) and he added that the owner of this building knew it to be a “drug building.” For approximately fifteen minutes, PO Chen questioned § 87(2)(b) about her suspected possession of drugs, saying that he knew that § 87(2)(b) had drugs, and asking § 87(2)(b) what else she held in her hands (**Allegation A**). § 87(2)(b) denied being in possession of any narcotics.

PO Chen exited the patrol car and continued to question § 87(2)(b) about narcotics. § 87(2)(b) told PO Chen that if he suspected her of possessing drugs, he should take her into the station house and find these drugs on her person. After questioning § 87(2)(b) for an additional fifteen minutes, PO Chen grabbed § 87(2)(b)'s arm, pulled it behind her back, and announced that he was "taking [her] down." PO Chen placed one cuff on § 87(2)(b)'s wrist, then frisked and searched § 87(2)(b) (In her intake call, § 87(2)(b) alleged that PO Chen frisked her at the initiation of the encounter, prior to placing her in handcuffs.) PO Chen then twisted § 87(2)(b)'s cuffed arm and pushed her body forward, so that the left side of § 87(2)(b)'s face struck the windshield of the patrol car. PO Chen subsequently placed his knee on § 87(2)(b)'s back and secured the other cuff on § 87(2)(b)'s free hand. § 87(2)(b) did not sustain any injuries as a result of PO Chen's actions. PO Linares remained in the patrol car during this time. § 87(2)(b) complained to PO Chen that he was putting pressure on her. PO Chen told § 87(2)(b) that he did not want to hear it because he knew that she was a "drug addict" and a "crack head" (**Allegation B**). § 87(2)(b) observed that people from the neighborhood were gathering to watch the arrest.

PO Chen placed § 87(2)(b) in the patrol car and transported her to the 77th Precinct station house. In her intake call, § 87(2)(b) alleged that prior to loading her into the patrol car, she complained to PO Chen that her handcuffs were too tight, and PO Chen deliberately tightened the cuffs. PO Chen brought § 87(2)(b) before the main desk, then he lodged § 87(2)(b) in a holding cell. Shortly afterwards, three unidentified female officers led § 87(2)(b) to another, private cell. § 87(2)(b) described the first officer as a black female, 5'9"-6'0", stocky, dressed in plainclothes; she described the second officer as a white female, 5'6"-5'7", 145-155 lbs., dressed in uniform; and she described the third officer as a white female 5'5", slender, with blond hair with black roots, dressed in uniform. The white officers grabbed the back of § 87(2)(b)'s coat. § 87(2)(b) told the officers that she was not a dog, and she asked the officers to release her coat. The white officers complied, but the black officer told § 87(2)(b) to "shut the fuck up," and she grabbed § 87(2)(b)'s collar and pulled her towards her. The § 87(2)(b), § 87(2)(a) CVR § 50-b

§ 87(2)(b) (**Allegation C**). During this search, § 87(2)(b) became angry, and began removing her clothes and throwing them onto the bench in the holding cell. The black officer told § 87(2)(b) "I didn't tell you to take it off. You do what I tell you, when I tell you." The black officer additionally told § 87(2)(b) to "shut the fuck up," and said, "You ain't nothing but an alcoholic and a crack head" (**Allegation D**). § 87(2)(b) did not mention this strip-search in her intake call.

§ 87(2)(b) told PO Chen and the black officer who conducted the search that she needed medication for high blood pressure. § 87(2)(b) also told a number of officers in the vicinity of her holding cell that she needed to speak with PO Chen, and she needed to go home and take her medication. In response, all of the officers just laughed at her. § 87(2)(b) began to feel dizzy, and she told the officers that she could not leave the station house. At approximately 2:45 PM, the officers told § 87(2)(b) that she was free to leave. However, § 87(2)(b) lay down on a bench in the holding cell and refused to leave the precinct upon request. One unidentified uniformed officer, a 5'7" white male with black hair, told § 87(2)(b) that if she did not leave the cell, he would issue her a summons (**Allegation E**).

§ 87(2)(b) claimed that she tried to file a complaint at the station house, to no avail. On further questioning, she stated that she said to every officer who passed, "Could somebody give me this officer that brought me in? I want to make a complaint against every last one of these cops laughing at me." When asked whether she ever asked any officer seated at the desk in the station house, § 87(2)(b) stated that she asked two black females dressed in plainclothes, who she identified as civilian secretaries, and these civilians ignored her. At some point, § 87(2)(b) called 311 to file a complaint. § 87(2)(b)'s friend, Sam Clark, eventually picked up § 87(2)(b) from the station house and drove her home. § 87(2)(b) denied that any officer issued her a summons prior to her release from custody.

On December 17, 2008, § 87(2)(b) viewed an officer photo array at the CCRB [Encl. 8A-AA]. The array comprised all officers assigned to the 77th Precinct who were on-duty during Tour 2 on February 28, 2008, and who broadly matched the descriptions provided by § 87(2)(b). The array also contained a number of "filler" photographs. § 87(2)(b) identified Lt. Joiceleah Cotton as the black female officer in plainclothes who cursed at her and pulled her by her jacket during her search inside of the 77th Precinct station house. § 87(2)(b) also identified PO Tania Salters, PO Margaret Merendino, and PO Juana Jacquez as officers present for this search. In addition, § 87(2)(b) identified Sgt. Valerie Clarke as a uniformed officer at the 77th Precinct station house who told her to "take her medicine," she identified PO Patricia Farrell as a plainclothes officer who spoke "nasty" to her and accused her of being drunk inside of

the 77th Precinct station house, and she identified Sgt. Donald Swanda as the desk officer at the 77th Precinct station house on February 28, 2008.

Results of Investigation

Officer Statements

PO Darryl Chen

Memo Book [Encl. 9A-C]

PO Chen prepared the following memo book entries regarding this incident: On February 28, 2008 at 2:24 PM, he placed one female under arrest in front of 1247 Dean Street. At 2:34 PM, he returned to the 77th Precinct station house. At 2:45 PM, he issued one C-summons for disorderly conduct. Finally, at 3:00 PM, he resumed patrol.

Summons [Encl. 10]

PO Chen issued § 87(2)(b) summons § 87(2)(b) for disorderly conduct (PL 240.20.03) on February 28, 2008. PO Chen recorded the time of the violation as 2:20 PM, and he noted that the violation occurred in front of 1247 Dean Street in Brooklyn.

CCRB Testimony [Encl. 11A-C]

PO Chen was interviewed at the CCRB on May 23, 2008. PO Chen is a § 87(2)(b). On February 28, 2008, PO Chen worked a tour of 11:30 AM-8:05 PM. He was assigned to work as Field Training Officer. He was partnered with PO Eddy Linares and PO Arthur McMahon. All three officers were dressed in uniform, and they were assigned to a marked patrol car.

On February 28, 2008 at approximately 2:20 PM, PO Chen was inside of his vehicle with PO Linares and PO McMahon, when he observed a female, later identified as § 87(2)(b) standing in front of 1247 Dean Street in Brooklyn. PO Chen had never seen § 87(2)(b) before. PO Chen noted that the vicinity of Dean Street, between Nostrand Avenue and New York Avenue, was the subject of numerous drug complaints and 911 calls around the time of this incident, and he observed that he made two narcotics-related arrests in this area during February 2008.

§ 87(2)(b) was making furtive movements, such that PO Chen was not certain what she was doing. When asked what exactly § 87(2)(b) was doing when he first observed her, PO Chen stated: "It seemed at the time, she was looking as if she was waiting for somebody, like she was looking for a hand-to-hand." On further questioning, PO Chen said that § 87(2)(b) was looking up and down the street, as though looking to purchase drugs; and he explained he has worked SNEU assignments in the past, and the people that he has arrested have made the same movements as § 87(2)(b). On yet further questioning, PO Chen testified that when he first drove up the block, it appeared that § 87(2)(b) had come from 1247 Dean Street, and when she saw the officers, she stopped, "panicked," and looked down. § 87(2)(b) did not appear to be holding anything in her hands.

PO Chen exited his patrol car and began to talk to § 87(2)(b). PO Linares and PO McMahon initially stayed in the vehicle. PO Chen said to § 87(2)(b) "Hi, how're you doing?" § 87(2)(b) immediately began yelling and screaming, directing profanity at PO Chen and accusing PO Chen of harassing her. PO Chen asked § 87(2)(b) whether she lived on the block. § 87(2)(b) responded, "None of your fucking business. Fuck you. Get the fuck away from me." PO Chen explained to § 87(2)(b) that he was not bothering her, and he noted that this was a bad block with a large number of arrests. § 87(2)(b) responded that this had nothing to do with her, and she continued: "Get the fuck away from me, and leave me the fuck alone." PO Chen asked § 87(2)(b) for ID, as he intended to issue her a summons for directing profanity at him. § 87(2)(b) replied, "I don't have to give you nothing. I don't have nothing." When asked whether § 87(2)(b)'s swearing was drawing a crowd, PO Chen stated that all that he could recall was 2-3 people across the street observing the interaction. PO Linares and PO McMahon exited the patrol car, and PO Chen handcuffed § 87(2)(b) because she did not have ID and therefore had to be transported to the precinct to verify her identity. § 87(2)(b) was standing on the sidewalk when she was handcuffed. PO Chen never brought § 87(2)(b) to the patrol car to place her in handcuffs, and no part of § 87(2)(b)'s body ever made contact with the patrol car during- or after her handcuffs were secured. Once § 87(2)(b) was in handcuffs, PO Chen frisked her for weapons. He did not search § 87(2)(b) as he intended to arrange for a search to be conducted by a female officer at the 77th Precinct

station house. PO Chen denied having any conversation with § 87(2)(b) about narcotics, and he denied calling § 87(2)(b) a “drug addict” or a “crack user.”

When asked for his intention in initially approaching § 87(2)(b) PO Chen stated, “Normally I like people who live on the block, and I speak with them. I’ll ask them, ‘How’s the neighborhood, how long have you been living here?’...And I usually say, ‘Well, then you’ve seen a lot of changes.’...If it would have went like that, we would have just had a little discussion and I would have introduced myself, and that would have been it.” PO Chen continued: “Somewhat introduce, but just to see who she § 87(2)(b) is at that point, as well, like I said, because the neighborhood is really drug-infested.” When asked whether he ever questioned § 87(2)(b) about her business at 1247 Dean Street, PO Chen stated that he spoke with § 87(2)(b) about this issue—and about drug activity on the block—at the station house.

PO Chen, PO Linares, and PO McMahon transported § 87(2)(b) to the 77th Precinct station house. A female officer, whose identity PO Chen could not recall, performed a routine search of § 87(2)(b) in front of the main desk in the station house, then PO Chen lodged § 87(2)(b) in a holding cell. PO Chen subsequently conducted a warrant check on § 87(2)(b) and when he discovered that she did not have any open warrants, he issued her a summons for disorderly conduct and released her from custody. PO Chen denied that § 87(2)(b) was strip-searched, explaining that there was no reason to conduct such a search, since § 87(2)(b) was being released with a summons. PO Chen did not see any officer grab § 87(2)(b) by the collar, nor did he hear any officer tell § 87(2)(b) to “shut the fuck up,” or call § 87(2)(b) an “alcoholic” or a “crack head.” § 87(2)(b) was only held at the station house for approximately 20-25 minutes. PO Chen did not recall § 87(2)(b) requesting medication or stating that she wished to file a complaint.

PO Eddy Linares

Memo Book [Encl. 12A-B]

PO Linares did not prepare any memo book entries regarding this incident.

CCRB Testimony [Encl. 13A-B]

PO Linares was interviewed at the CCRB on July 23, 2008. PO Linares is a § 87(2)(b)

PO Linares’ testimony was consistent with PO Chen’s testimony, with the following exceptions: PO Linares did not initially suspect § 87(2)(b) of any criminal behavior, and PO Chen did not say anything to indicate that he suspected § 87(2)(b) of involvement in criminal activity. PO Linares did not hear any of the conversation between PO Chen and § 87(2)(b) as they were standing approximately 1-2 car-lengths away from the patrol car, but he observed as § 87(2)(b) became upset and began cursing at PO Chen. Finally, PO Linares did not interact with § 87(2)(b) at the 77th Precinct station house because he resumed patrol immediately after dropping off PO Chen and § 87(2)(b) at the station house.

PO Arthur McMahon

Memo Book [Encl. 14A-B]

PO McMahon did not prepare any memo book entries regarding this incident.

CCRB Testimony [Encl. 15A-B]

PO McMahon was interviewed at the CCRB on October 7, 2008. PO McMahon is a § 87(2)(b)

PO McMahon did not have any independent recollection of the arrest of § 87(2)(b) on February 28, 2008. PO McMahon did not recognize a scanned photograph of § 87(2)(b)

Lt. Jocceleah Cotton

Memo Book

Lt. Cotton did not prepare any memo book entries regarding this incident, as she was assigned to perform administrative duties on February 28, 2008.

CCRB Testimony [Encl. 18A-B]

Lt. Cotton was interviewed at the CCRB on January 14, 2009. Lt. Cotton is a § 87(2)(b).

Lt. Cotton worked a tour of 8:00 AM-4:33 PM on February 28, 2008. She was working as the Operations Coordinator for the 77th Precinct. Lt. Cotton noted that the Administrative Offices are located on the second floor of the 77th Precinct station house, and she generally operates out of this office when working as Operations Coordinator. She was dressed in uniform (a white shirt), and she was not assigned a partner.

Lt. Cotton had no independent recollection of an interaction with § 87(2)(b) inside of the 77th Precinct station house on February 28, 2008. When assigned to Operations Coordinator, it is extremely rare for Lt. Cotton to assist other officers with arrest processing. She was not asked to assist in the search or strip-search of a prisoner on February 28, 2008. Lt. Cotton observed that, as a supervisor, she has never performed a strip-search of a prisoner. Lt. Cotton did not recognize a scanned photograph of § 87(2)(b).

PO Tania Salters

Memo Book [Encl. 16A-B]

PO Salters did not prepare any memo book entries regarding this incident.

CCRB Testimony [Encl. 17A-B]

PO Salters was interviewed at the CCRB on January 14, 2009. PO Salters is a § 87(2)(b).

PO Salters worked a tour of 7:05 AM-3:40 PM on February 28, 2008. She was assigned to the School Unit with Sgt. Darryl Hewitt, PO Marcia Higgins, and PO Sheryl Castillo. All four officers were dressed in uniform, and they were assigned to a marked van (#5322 or #5871).

PO Salters did not have any independent recollection of an interaction with § 87(2)(b) inside of the 77th Precinct station house on February 28, 2008. PO Salters did not recognize a scanned photograph of § 87(2)(b). PO Salters reviewed the 77th Precinct Interrupted Patrol Log for February 28, 2008, and she verified that she wrote in this log that she took a meal break at the 77th Precinct station house from 2:35 PM-3:35 PM. PO Salters explained that, when she returned to the station house for her meal break, she signed the Interrupted Patrol Log at the main desk, then she immediately walked upstairs to the locker room to take her meal. She noted that Sgt. Hewitt prefers to take meal break immediately before the end of his team's tour. PO Salters did not interact with any civilians in the 77th Precinct station house at any time during her meal break on February 28, 2008. She was never asked to assist in the search of a civilian at the 77th Precinct station house. If she had been asked to assist in such a search, PO Salters observed that she would have noted this in her memo book. Finally, PO Salters remarked that she had no reason to work with PO Chen on this date, since PO Chen generally works with the "rookie" officers.

PO Margaret Merendino

Memo Book [Encl. 19A-D]

PO Merendino did not prepare any memo book entries regarding this incident.

CCRB Testimony [Encl. 20A-B]

PO Merendino was interviewed at the CCRB on February 13, 2009. PO Merendino is a § 87(2)(b).

PO Merendino worked a tour of 7:05 AM-3:40 PM on February 28, 2008. She was initially assigned to the LAPS Office in the 77th Precinct station house, but at 10:30 AM, her assignment was switched to Sector 77I/J Patrol with PO Melissa Lento. PO Merendino was dressed in uniform, and for the latter assignment, she was assigned to a marked patrol car (#1321).

PO Merendino had no independent recollection of an interaction with § 87(2)(b) inside of the 77th Precinct station house on February 28, 2008. PO Merendino did not recognize a scanned photograph of § 87(2)(b). PO Merendino reviewed the Interrupted Patrol Log for February 28, 2008, and she confirmed that this document indicates that she and PO Lento returned to the 77th Precinct station house for meal between 12:50 PM and 1:50 PM. PO Merendino explained that she always takes her meal break in the officer locker room. She spent the entire hour on meal, explaining that if she had completed any police-related duties

during this time, she would have stopped her meal and noted this break in her memo book. She did not have any entries in her memo book noting non-meal-related actions taken at the station house on February 28, 2008. She did not recall whether she interacted with any civilians during her time in the station house.

PO Merendino stated that she has never performed a strip-search during her 12 years' tenure with the NYPD. If PO Merendino were asked by another officer to perform any search of a prisoner, she would likely note this in her memo book.

Officers Not Interviewed

PO Jaquez was not interviewed by the CCRB because there was no police documentation to corroborate § 87(2)(b)'s claim that she was present at the 77th Precinct station house while § 87(2)(b) was in police custody. PO Farrell was not interviewed by the CCRB because § 87(2)(b) did not articulate any FADO allegations with PO Farrell as the subject. Finally, Sgt. Sanchez was not interviewed because although Sgt. Sanchez was likely working as Desk Sergeant at the time of § 87(2)(b)'s arrival at the 77th Precinct station house (see below), the investigation uncovered no evidence to sustain § 87(2)(b)'s contention that she was strip-searched, or that a strip-search had even been discussed with the desk sergeant: the Command Log does not include any notations indicating the authorization of a strip-search, PO Chen testified that he had no reason to request a strip-search, given that he exercised his discretion to release § 87(2)(b) with a summons when he determined that she had no open warrants, and the officers who § 87(2)(b) identified as present for this strip-search plausibly denied their involvement. Further, in October 2008, Sgt. Sanchez left active duty for a number of months on maternity leave, and the investigation determined that in the absence of any pertinent documentation, Sgt. Sanchez could not reasonably be expected to recall the circumstances of a single arrest nearly one year afterwards. In addition, although § 87(2)(b) alleged that she publicly expressed her desire to file a complaint against various officers at the 77th Precinct station house, she claimed to have directed her remarks at civilian secretaries seated at the main desk, and she did not identify Sgt. Sanchez in the officer photo array as a subject of this allegation.

NYPD Documents

77th Precinct Roll Call [Encl. 22A-M]

The 77th Precinct Roll Call for Tour 2 on February 28, 2008 confirms that PO Chen and PO Linares were working as Impact Training Officers from 11:30 AM-8:05 PM, PO McMahon was assigned to Impact Post from 11:30 AM-8:05 PM, Lt. Cotton was working as Operations Coordinator from 8:00 AM-4:33 PM, PO Salters was assigned to the School Unit from 8:00 AM-4:35 PM, and PO Merendino was assigned to the LAPS Office from 7:05 AM-3:40 PM. The Roll Call additionally indicates that PO Farrell was assigned to SP-10 Auto from 7:05 AM-3:40 PM, PO Jaquez was assigned to Impact Post from 11:30 AM-8:05 PM, and Sgt. Swanda was working as Patrol Supervisor from 6:55 AM-3:52 PM. The Roll Call does not identify the Desk Sergeant, but a telephone call to the ICO of the 77th Precinct, Lt. Pasquale Esposito, in May 2008 confirmed that Sgt. Tania Sanchez was assigned to the desk from 6:55 AM-3:52 PM.

77th Precinct Command Log [Encl. 21]

The 77th Precinct Command Log entry for § 87(2)(b)'s arrest is registered at 2:25 PM. In this entry, it is noted that § 87(2)(b) was arrested by PO Chen for disorderly conduct in front of 1247 Dean Street. § 87(2)(b)'s physical/mental condition is described as "apparently normal." The entry notes that § 87(2)(b) was released with summons § 87(2)(b).

77th Precinct Prisoner Holding Pen Roster [Encl. 23A-D]

The 77th Precinct Prisoner Holding Pen Roster does not include any entries documenting § 87(2)(b)'s time in custody.

77th Precinct Interrupted Patrol Log [Encl. 24]

The 77th Precinct Interrupted Patrol Log for February 28, 2008 verifies that PO Lento and PO Merendino returned to the 77th Precinct station house for meal between 12:50 PM and 1:50 PM, PO Farrell returned to the 77th Precinct station house for meal between 1:02 PM and 2:02 PM, PO Salters returned to the 77th Precinct station house for meal between 2:35 PM and 3:35 PM, and PO Linares and PO McMahon returned to the 77th Precinct station house for meal between 4:35 PM and 5:35 PM. There are no other relevant entries between 1:00 PM and 5:00 PM.

77th Precinct Stop, Question, and Frisk Report Index [Encl. 25A-E]

The 77th Precinct Stop, Question, and Frisk Report (UF-250) Index for February 28, 2008 does not include any UF-250s prepared for § 87(2)(b) or any UF-250s prepared by PO Chen or PO Linares.

Subject Officer CCRB History [Encl. 3A-B]

In his fifteen years' tenure with the NYPD, PO Chen has never been the subject of a substantiated CCRB allegation.

Status of Summons [Encl. 26A-B]

An inquiry into the Office of Courts Administration Database did not yield any record of § 87(2)(b)'s summons.

§ 87(2)(b)

Civil Lawsuit [Encl. 27A-B]

According to § 87(2)(b), as of the date of this report, the NYC Comptroller's Office is not in possession of any Notice of Claim for this incident.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) alleged that a black male officer, who she identified as PO "Chin," stopped and questioned her in front of 1247 Dean Street in Brooklyn. PO Chen, a black male, acknowledged that it was his decision to stop § 87(2)(b) and all available evidence indicates that PO Chen was the sole officer to interact with § 87(2)(b) in front of 1247 Dean Street. Therefore, Allegations A and B are being pleaded against PO Chen. § 87(2)(b) described the officers who strip-searched her in the 77th Precinct station house as a black female, 5'9"-6'0", stocky, and dressed in plainclothes, a white female, 5'6"-5'7", medium build, dressed in uniform, and a white female 5'5", slender, with blond hair with black roots, dressed in uniform. She also alleged that the black female officer used physical force against her and spoke discourteously to her during this search. In an officer photo array, § 87(2)(b) identified Lt. Cotton as the black female officer, and she identified PO Merendino, PO Salters, and PO Jaquez as the other officers present for this search. However, none of these officers substantially matches the physical descriptions provided by § 87(2)(b) and all available police documentation of this incident (Roll Call, Interrupted Patrol Log, Command Log, officer memo books and testimony, etc.) indicates that these officers were either not present at the station house at the time of the alleged strip-search, or had assignments that would render participation in a prisoner search highly unlikely. For these reasons, Allegation C is being pleaded against "Officers," and Allegation D is being pleaded against "An officer." Finally, § 87(2)(b) described the officer who threatened to issue her a summons at the 77th Precinct station house as a white male, 5'7", with black hair. In light of the number of uniformed white male officers likely to be present at the 77th Precinct station house at the time of this incident, as well as the investigation's finding that a threat of summons in the circumstances described by § 87(2)(b) constituted a statement of fact, the investigation did not work to identify this officer. Accordingly, Allegation E is being pleaded against "An officer."

Undisputed Facts

It is undisputed that PO Chen questioned § 87(2)(b) as she stood on the sidewalk in the vicinity of 1247 Dean Street in Brooklyn. In addition, it is undisputed that PO Chen placed § 87(2)(b) under arrest for disorderly conduct, and transported her to the 77th Precinct station house.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) [Redacted text block]

§ 87(2)(b), § 87(2)(g) [Redacted text block]

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[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegations Not Pleaded

An allegation that PO Chen stopped § 87(2)(b) is not being pleaded because the investigation determined that PO Chen did not technically stop § 87(2)(b) until the point that he asked her for ID, which was for the explicit purpose of issuing her a summons. Although there is dispute over whether § 87(2)(b) actually committed the crime of “disorderly conduct,” PO Chen’s request for ID was based on his belief that he had probable cause to serve § 87(2)(b) a summons—and any investigation into the validity of this summons is the province of Kings County Criminal Court. Likewise, an allegation regarding the use of physical force by PO Chen in front of 1247 Dean Street is not being pleaded because by § 87(2)(b)’s account, the purported physical force was minimal, and clearly aimed at securing her handcuffs once she was under arrest. Similarly, allegations regarding the frisk and search of § 87(2)(b) are not being pleaded because these actions were taken incident to the decision to take § 87(2)(b) into custody.

An allegation that an officer behaved rudely towards § 87(2)(b) inside of the 77th Precinct station house is not being pleaded because the action described by § 87(2)(b) grabbing her by the back of her collar and pulling her forwards prior to the alleged strip-search—can be reasonably subsumed under the existing “discourtesy” allegation, both because this action does not itself rise to the level of sanctionable misconduct, and because § 87(2)(b) attributed this action to the same officer who spoke rudely to her.

Finally, an allegation that an officer or officers refused to process § 87(2)(b)’s civilian complaint is not being pleaded because § 87(2)(b) did not direct this allegation at any particular officer. Rather, she claimed to have only directly asked two individuals, who she identified as civilian secretaries. The investigation accounted for the possibility that § 87(2)(b) incorrectly identified MOS as civilians by adding to the officer photo array all officers matching § 87(2)(b)’s descriptions who were on-duty in the 77th Precinct at the time of occurrence (including the desk officer and assistant desk officer), yet § 87(2)(b) did not identify any officer as the subject of this allegation.

Allegation A: PO Darryl Chen questioned § 87(2)(b)

The investigation determined that PO Chen asked § 87(2)(b) general questions regarding her activities and her knowledge of crime in the neighborhood. In order to properly analyze this allegation, it is necessary to determine the type of legal encounter the initial questioning constituted. According to the NYPD’s Guide to Street Encounters, a Level I “Request for Information” consists of “questions concerning the subject’s name, address, conduct, or presence at the location” [Encl. 1]. As per Kamins, the Court of Appeals clarified this definition in *People v. Hollman* (1992), finding that a “Request for Information” includes “basic, nonthreatening questions that would not lead a person to believe he is the focus of an

investigation” [Encl. 2B]. PO Chen stated that his intention was to generate a productive conversation with

§ 87(2)(b) § 87(2)(g)

As for the grounds for this police action, PO Chen testified that the factors leading him to approach § 87(2)(b) included her vaguely-defined “furtive movements”—looking up and down the street, and averting her eyes upon seeing a marked patrol car—and her presence in an area with high narcotics-related crime. The NYPD’s Guide to Street Encounters states that a Level I Request for Information may be based on “any articulable reason to approach,” noting that “suspicion of criminality is not required,” although the officer “must be able to articulate a basis beyond mere whim and caprice.” As per *People v. DeBour* (1976), an officer must have an “objective credible reason for that interference not necessarily indicative of criminality” [Encl. 2A]. PO Chen satisfied this standard by providing numerous observations which have been sustained by New York Courts as legitimate grounds for a Level I Request for Information: For unusual behavior by a civilian in a “drug-prone location,” see *People v. Fajardo* (1994); for “a defendant’s nervous, furtive, or hesitant reaction after making eye contact with the police,” see *People v. Reid* (1994); and for a civilian’s presence in a “high-crime area,” see *Adams v. Williams* (1972) [Encl. 2C-E]. § 87(2)(g)

Allegation B: PO Darryl Chen spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation C: Officers strip-searched § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation D: An officer spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation E: An officer threatened to issue a summons to § 87(2)(b)

By § 87(2)(b)’s account, an officer threatened to serve her a summons when she refused to leave a holding cell inside of the 77th Precinct station house. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: